

EXHIBIT 2

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Long Island Federal Courthouse
814 Federal Plaza
Central Islip, NY 11722-4451
(631) 712-5730**

BEFORE: ARLENE R. LINDSAY
United States Magistrate Judge

DATE: 10/22/08

TIME: 10:00 a.m.

DOCKET NO: CV 07-4018 (TCP)

CASE: Sleepy's v. Select

☐ **INITIAL CONFERENCE**

☐ **STATUS CONFERENCE**

BY TELEPHONE ☐

☐ **SETTLEMENT CONFERENCE**

☐ **FINAL CONFERENCE ORDER**

☒ **DISCOVERY CONFERENCE**

APPEARANCES:

FOR PLAINTIFF:

FOR DEFENDANTS:

George DuPont

Heidi Fisher

L. Donald Prutzman

The following rulings were made:

The defendants' motion to compel dated September 15, 2008 and the plaintiffs' motion to compel dated September 24, 2008 were resolved on the record. The rulings are summarized below, however, the parties should continue to be guided by the discussion at today's conference:

1. the defendants' motion to compel request nos. 5, 22, 32 are denied;
2. the defendants' motion to compel request no. 19, 20, 23, 24 and 28 are granted to the extent the requests are narrowed to address the claim of slander. Documents relevant to complaints concerning the sale of "refurbs" or returned mattresses, the condition of warehouses and mattresses in those warehouses specifically with respect to moisture, allergens and pestilence, and the failure to honor warranties are to be disclosed;
3. the defendants' motion to compel request no. 18 is granted to the extent it is relevant to the claim of slander;
4. the defendants' motion to compel request no. 11 is granted to the extent the request was narrowed by the court to include only shop reports of Select Comfort

stores or company policies and procedures concerning secret shops;

5 the defendants' motion to compel request no. 30 is granted to the extent the request was narrowed by the court to documents concerning warehouse conditions in the areas where Sleep Number Beds were sold;

6. the defendants motion to compel automatic disclosure and request no. 35 is denied in view of the availability of an expert report. The plaintiff shall provide the defendants with an expert report addressing lost profits and damages;

7. the plaintiffs are directed to provide the defendant with a verified statement indicating that there are no audio tapes of secret shop interviews or reports;

8. the plaintiff's request for documents relating to other retail partner agreements is denied; and

9. the defendant shall make the CAD drawings available for the plaintiff's review.

SO ORDERED:

_____/s/_____
